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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 KEVIN JOSEPH SMITH,

11 Petitioner,

12 v.

13 SCOTT FRAKES,

14 Respondent.

CASE NO. C10-5921-RJB-JRC

ORDER DENYING APPOINTMENT  
OF COUNSEL

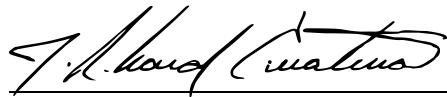
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16 The underlying petition for a writ of habeas corpus has been referred to United States  
17 Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and Local  
18 Magistrate Judges' Rule MJR3 and MJR4. Petitioner is seeking federal habeas relief, pursuant  
19 to 28 U.S.C. § 2254.

20 Petitioner has filed a motion for appointment of counsel (ECF No. 34). There is no right  
21 to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing  
22 is required, because the action is civil, not criminal, in nature. Brown v. Vasquez, 952 F.2d 1164,  
23 1168 (9th Cir. 1991) (*citing* McCleskey v. Zant, 499 U.S. 467, 495 (1991)); *see* Ortiz v. Stewart,  
24 149 F.3d 923, 939 (9th Cir. 1998) ("There is simply no constitutional right to an attorney in a

1 state post-conviction proceeding.”); see also Terrovona v. Kincheloe, 852 F.2d 424, 429 (9th Cir.  
2 1988); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District  
3 Courts.

4 Petitioner’s motion for appointment of counsel is DENIED.

5 Dated this 29<sup>th</sup> day of November, 2011.

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9 J. Richard Creatura  
United States Magistrate Judge  
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